

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Regular Second Appeal No.237 of 2006.

Date of decision:08.09.2006

Vinod Kumar

....Appellant

Versus

Neelam Singh & Others

....Respondents.

Coram

The Hon'ble Mr.Justice Surjit Singh, J.

Whether approved for reporting ?¹

**For the Appellant: Mr.G.D. Verma, Senior Advocate
with Mr.B.C. Verma, Advocate.**

For the Respondents:

Surjit Singh,J. (Oral)

Heard and gone through the record.

A suit was filed against the appellant and proforma respondents No.2 and 3 by respondent No.1 Neelam Singh, hereinafter called plaintiff. It was alleged that the plaintiff, his brother and mother being successors of Dalip Singh (the father of the plaintiff) were in possession of Khasra No.813 min, Khatauni No.456 as entered in Jamabandi for the year 1992-93 and that the appellant, who was impleaded as defendant, had been threatening to forcibly dispossess them from said Khasra No.813 min, hereinafter called suit property.

¹ *Whether the reporters of Local Papers may be allowed to see the judgement?*

Defendant-appellant contested the suit and denied that the plaintiff, his mother and brother were in possession. It was alleged that the land belongs to the State Government. It was stated that in the year 1981 the appellant had constructed some shops and had also laid foundation for construction of additional structure on his own adjoining Khasra No.814 and at that time no objection was raised by the plaintiff or his predecessor Dalip Singh. Certain preliminary objections were also raised.

Trial Court framed various issues based on preliminary objections as also the factual aspect of the matter. Ultimately it was held that the plaintiff was in possession of the suit land and the defendants had been threatening to disturb their possession without any right, title or interest. Consequently, the suit was decreed.

Appellant-defendant went in appeal to the Court of District Judge. Appeal has been dismissed. Findings and decree of the trial Court stand affirmed.

Learned counsel representing the appellant submits that the two Courts below have not appreciated the evidence, particularly the testimony of PW-2 Shri Satish Kumar while dealing with the question as to which of the two sides is in possession of the suit land. He has stated that Satish Kumar in his deposition categorically stated that the possession was with the defendants.

It is true that in the cross-examination Satish Kumar stated that possession of the suit land was with the defendants, but at the same time in the examination-in-chief he stated that the plaintiff was the

owner in possession of the suit land and not only this in the cross-examination he denied the specific suggestion put to him on behalf of the defendants that in the year 1981-82 defendants had laid foundation for some structure over an area measuring 40 feet X 30 feet, out of the suit land. As a matter of fact, the statement of this witness that the possession is with the defendant will not come to the rescue of the appellant-defendant, because he has nowhere claimed in his written statement that the possession of the suit land is with him. On the contrary, as already noticed, his specific stand is that he constructed the shops and also laid the foundation for additional structure in the year 1981 on his own adjoining land bearing Khasra No.814. He did not say, even by implication, that any portion of the suit land was in his possession, though he did say that the plaintiff was out of possession.

Learned counsel representing the appellant vehemently submits that in his deposition as DW-1, the defendant claimed that he was in possession of the suit land. His deposition has simply to be ignored being at variance with his pleadings. No foundation for such a claim was laid by him in the written statement.

It is also the submission of the learned counsel that the first appellate Court has committed serious illegality in observing that the statement of PW-2 Satish Kumar that the possession is with the defendant, appears to be due to slip of tongue. I do not see any need to look into this aspect of the matter, because as

noticed hereinabove, it is clear that the defendant did not claim in his written statement that the possession of the suit land was with him.

It is also submitted by the learned counsel that trial Court's observation that PW-2 corroborated the testimony of the plaintiff in verbatim is also untrue. May be what the learned counsel says is true but, that will not make any difference, because defendant, according to his pleadings, is not in possession, whereas plaintiff, according to his deposition in the Court which is duly corroborated by the entry in the Jamabandi for the year 1991-92 is in possession.

In view of the abovesaid position, I find no merit in the submission of the learned counsel that this is a case of misreading of the evidence. Since no substantial question of law arises, appeal is dismissed.

CMPs No.381, 401 and 402 of 2006.

Infructuous.

September 8, 2006
(aks)

(Surjit Singh)
Judge.